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09/701,751	02/08/2001	Beatrix Kottwitz	H-3491-PCT/U	7934

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**GROUP 1700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20040311

Application Number: 09/701,751  
Filing Date: February 08, 2001  
Appellant(s): KOTTWITZ ET AL.

\_\_\_\_\_  
Glenn E. J. Murphy  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 20, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the

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pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1, 12-18, 20 and 21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

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**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 12-18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbots et al (WO 98/07818). This rejection is set forth in prior Office Action, Paper No. 14, dated 10/22/2002.

Herbots (WO' P 818) teaches detergent compositions in a liquid, powder or granular forms (see page 12, last paragraph) comprising from 0.00024% to 0.048% of  $\alpha$ -amylase (BAN) as claimed in claims 1 and 12, (see page 11, second paragraph and page 12, first paragraph), from about 1% to about 25% percarbonate such as sodium percarbonate as claimed in claims 13 and 16-17, (see page 35, second paragraph and middle of page 57), a bleaching-activating transition metal complex as claimed in claim 15, (see page 37, second paragraph) and tetraacetythylenediamine (TAED) as a compound that gives off peroxycarboxylic acid under perhydrolysis as claimed in claim 14, (see page 36, second paragraph). Herbots also teaches a method comprising the step of soaking, rinsing or pretreating of stained fabrics to provide fabric cleaning, stain removal, whiteness, softening, color appearance and dye transfer inhibition as claimed in claims 20-21, (see page 13 first paragraph). Regarding claim 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an alkali metal having the claimed limitation because the reference teaches sodium percarbonate as an alkali metal as claimed which should have same morphology index as claimed.

The instant claims differ from the reference by reciting a detergent composition comprising one species of  $\alpha$ -amylase enzyme derived from *Bacillus amyloliquefaciens*.

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However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a detergent composition and to select any of the species of the amylase genus that taught by reference, including  $\alpha$ -amylase of the claims, because an ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole.

**(11) *Response to Argument***

The examiner has reviewed Appellants arguments and respectfully disagrees with counsel's allegations. Specifically, appellants argue that the Examiner has failed to establish a prima facie case of obviousness of appellants' claims and that even if the claims are prima facie obvious, they are not ultimately obvious in view of unexpected performance demonstrated in their application.

The examiner position is such that the arguments are not found persuasive because of the following reasons.

In establishing a prima facie case of obviousness, three criteria must be met. See *in re Vaeck*, 947 F2d. 488, 20 USPQ 2d 1438 (Fed. Cir. 1991). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (see MPEP 2143).

In this case the three criteria have been met, because the reference of Herbots et al. (WO' 818) is in the same art of detergent compositions.

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Herbots (WO' 818) clearly teaches and discloses a detergent composition comprising bleaching agents of percarbonates and percarboxylic acids (see page 35, second and forth paragraphs) and a number of amylase including  $\alpha$ -amylase enzymes which are derived from different sources (see page 11, last paragraph and page 12, first paragraph).

Therefore, a person of ordinary skill in the art would be motivated to select any species of  $\alpha$ -amylase enzymes including the claimed species no matter from which source these enzymes are derived because an ordinary artisan would have the reasonable expectation that any of the  $\alpha$ -amylase species would have similar properties of high activity and thermostability levels as taught by the reference in the absence of contrary.

Further, the appellants argue on page 8, (second paragraph), that EP 0 684 304 and EP 0 867 504 disclose that  $\alpha$ -amylases are particularly sensitive to bleaching agents and become inactivated in the presence of peroxidic and other oxidizing agents.

The examiner respectfully, disagrees with the above argument because none of the recited prior art of EP 0 684 304 and EP 0 867 504 that mentioned by the appellants, teaches or discloses a detergent composition that comprises  $\alpha$ -amylases in the presence of percarbonates as taught by the reference of Herbots.

Furthermore, the appellants argue on page 9, (third paragraph), that a comparative testing presented in appellant's examples 1 and 2 indicated that the detergent compositions comprising the naturally occurring  $\alpha$ -amylases derived from *Bacillus amyloliquefaciens* clearly outperformed otherwise identical detergent compositions containing these other  $\alpha$ -amylases, and, thus, any prima facie obviousness based on Herbots is rebutted by appellant's evidence of unexpected and superior cleaning performance according to the invention.

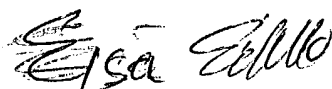
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The examiner respectfully, disagrees with the above argument because the appellants in comparative Examples 1 and 2 merely assert that claimed composition in presence of naturally occurring  $\alpha$ -amylases outperformed. Appellants have provided no factual basis for this assertion. No data is given in these Examples as to how the claimed composition outperformed. Appellants failed to show the evidence of unexpected and superior cleaning performance of the claimed composition over the prior art compositions. When evidence is viewed as a whole, the data presented is not of a probative value. It is well settled that unexpected results must be established by factual evidence (see MPEP 716.01(c)).

Accordingly, the Office maintains that the Examiner has met the burden to establish the prima facie showing of obviousness. Viewed as a whole, the invention as claimed would have been obvious to one of ordinary skill in the art at the time of the invention.

Finally, the Examiner request that this Board when viewing the evidence as a whole, and lacking any secondary indicia of nonobviousness, affirm the decision of the Examiner in whole.

For the above reasons, it is believed that the rejections should be sustained.





Examiner Eisa Elhilo

March 22, 2004

Respectfully submitted,

Conferees

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